

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHRISTINE DUTTWEILLER,

Plaintiff,

v.

5:05-CV-0886 (NAM/GHL)

UPSTATE BUILDING MAINTENANCE
COMPANIES, INC., *et al.*;

Defendants.

APPEARANCES:

OF COUNSEL:

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MAIREAD E. CONNOR, ESQ.

GEORGE H. LOWE, United States Magistrate Judge

ORDER TO SHOW CAUSE

_____ On May 8, 2007, in the above matter, the Court issued a Decision and Order granting Plaintiff's motion for leave to file an Amended Complaint. (Dkt. No. 55.) In that Decision and

Order, the Court brought to the attention of Plaintiff's counsel several mistakes in Plaintiff's proposed Amended Complaint. (*See, e.g., id.* at 4, 6, 13-15, 17.) On May 21, 2007, Plaintiff filed a document purporting to be her "Amended Complaint." (Dkt. No. 56.) However, that document did not correct any of the mistakes referenced in the Court's Order of May 8, 2007. (*See generally id.*) This Order to Show cause addresses, and attempts to rectify, those mistakes.

Among the mistakes in question was the fact that, although Plaintiff's counsel represented to the Court that the proposed Amended Complaint withdraws Plaintiff's claims against "Upstate Building Maintenance Companies, Inc.,"¹ that entity was identified as a "Defendant" in the body of the Proposed Amended Complaint. (Dkt. No. 55, at 4, n.2.) Specifically, that entity is identified as a "Defendant" in Paragraphs 4 and 25 of the proposed Amended Complaint. (*See* Dkt. No. 45, "Proposed Amended Complaint," ¶¶ 4, 25 [identifying entity "Upstate Building Maintenance Inc." as a "Defendant"].)

Another mistake brought to counsel's attention was the fact that the proposed Amended Complaint was mislabeled a "Consolidated" Complaint, when in fact joinder (rather than consolidation) was what the Court was liberally construing Plaintiff's motion as requesting. (Dkt. No. 55 at 6, 13-15, 17.)

Another mistake was that the Complaint's *title* names as defendants "John Doe 1-5," although the body of the pleading does not identify any such claims against those individuals (nor does the caption even mention them). (Dkt. No. 55 at 4.)


¹ (*See, e.g.,* Dkt. No. 45, "Notice" [stating that motion was being made, in part, to "chang[e] the parties"]; Dkt. No. 45, "Affidavit," ¶¶ 2, 3 [stating that motion was being made, in part, to "chang[e] the parties" and "remove the irrelevant parties"]; Dkt. No. 45, "Proposed Amended Complaint," Caption [not listing "Upstate Building Maintenance Companies, Inc." as a Defendant].)

When the Court directed Plaintiff to promptly file a signed copy of her Amended Complaint (*id.* at 22), it assumed that Plaintiff would correct these mistakes before filing her signed Amended Complaint or that, at the very least, her signed Amended Complaint would not be conspicuously and misleadingly labeled on the bottom of each page “**PROPOSED AMENDED COMPLAINT.**” (Dkt. No. 56 [emphasis in original].)

ACCORDINGLY, it is

ORDERED that Plaintiff is directed to **SHOW CAUSE**, on or before **JUNE 11, 2007**, why the Court should not enter an Order, under Rules 8(a)(2), 8(e)(1), 12(f) and 16(f) of the Federal Rules of Civil Procedure, striking her *purported* “Amended Complaint” (Dkt. No. 56) and directing her to file a *corrected* “Amended Complaint,” which contains the following **five** changes: (1) striking the words “**PROPOSED AMENDED COMPLAINT**” from each page; (2) striking the word “**CONSOLIDATED**” in the title of the pleading and replacing it with the word “**AMENDED**”; (3) striking the words “**AND JOHN DOE 1-5**” from the title of the pleading; (4) striking the word “Defendant” immediately before the words “Upstate Building Maintenance Inc” in Paragraphs 4 and 25; and (5) renumbering the Paragraphs currently erroneously numbered “3,” “3,” “4,” “5,” “6,” “7,” “9” as ” “3,” “4,” “5,” “6,” “7,” “8,” “9.” **In the event Plaintiff can come up with no reason that these changes should not be made, she is granted permission to simply file a corrected Amended Complaint before JUNE 11, 2007.**

Dated: May 31, 2007
Syracuse, New York


George H. Lowe
United States Magistrate Judge